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SUPREME COURT OF THE UNITED STATES.

No. 57.

JOHN A. GIBSON AND KINCHEN A. MARTIN, PLAINTIFFS IN ERROR,

vs.

BEVERLY CHEW.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MISSISSIPPI.

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S. D. Langtree, Print.

[REC. LVII. 1842.]

BEVERLY CHEW
vs.
JOHN A. GIBSON et al.

Pleas before the Honorable Samuel J. Gholson, District Judge of the United States, at a Circuit Court of the United States, held at the town of Jackson, in and for the Ninth Circuit and Southern District of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and forty.

Be it remembered, that heretofore, to wit, on the sixth day of March, in the year of our Lord one thousand eight hundred and forty, came Beverly Chew by Geo. S. & J. S. Yerger, his attorneys, into the clerk's office of the court aforesaid, and sued out the following writ of summons ad respondendum against John A. Gibson et al., to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.

The President of the United States, to the Marshal of the Southern District of Mississippi, greeting.

We command you without delay, to summon John A. Gibson and Kinchen A. Martin, who are citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the Southern District of Mississippi, on the first Monday of May next, to answer to Beverly Chew, who is a citizen of the State of Louisiana, of a plea of trespass on the case to his damage seven thousand dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United *States*, the second day of March, A. D. 1840, and of the Independence of the United States the sixty-fourth. [L. S.]

WM. BURNS, *Clerk.*

Marshal's Return.

"Executed on J. A. Gibson, 3d April, 1840.

Executed on K. A. Martin, 6th April, 1840.
WM. M. GWIN, *Marshal, by*
J. J. McNULTY, *his Dep.*"

And on the same day of suing out the writ aforesaid, the plaintiff, by his attorneys aforesaid, filed his declaration herein, in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Southern District of Mississippi, United States Circuit Court, Ninth Judicial Circuit, May Term, A. D. 1840.

Beverly Chew, who is a citizen of the State of Louisiana, and plaintiff in this action, by attorney, complains of John A. Gibson and Kinchen A. Martin, who are citizens of the State of Mississippi, and defendants in this action, summoned, &c. of a plea of trespass on the case upon promises. For that whereas, the said defendant, John A. Gibson, by the name and signature of John A. Gibson, heretofore, to wit: on the 9th day of March in the year of our Lord one thousand eight hundred and thirty-eight, at Baldwin, to wit: at the district aforesaid, made his certain promissory note in writing, bearing date the day and year last aforesaid, and thereby then and there promised to pay, eleven months after the date of said promissory note, to Kinchen A. Martin or order at the Merchants' Bank in New Orleans, by the name of K. A. Martin, the sum of thirty-five hundred dollars and — cents, for value received, negotiable, and payable at, and interest at the rate of ten per cent. per annum from maturity till paid, and then and there delivered the same to said Kinchen A. Martin; and the said Kinchen A. Martin, to whom or to whose order the payment of the sum of money in the said note specified, was by the same to be made after the making of the said note and before the payment of the said sum of money therein specified, to wit: on the day and year last aforesaid, and at the district aforesaid, endorsed the same note in writing by the name of K. A. Martin; and by that endorsement ordered and appointed the said sum of money in the said note specified to be paid to Beverly Chew, and then and there delivered said note to said Beverly Chew, and the said plaintiff in fact says, that afterwards when the said promissory note became due and payable, according to its tenor and effect, to wit: on the eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty-nine, and at the district aforesaid, the said note was then and there presented and shown for payment at and in the Merchants' Bank in New Orleans, within the banking hours thereof, and payment of the said sum of money therein specified was then and there required, according to the tenor and effect of said note; but that neither the said John A. Gibson nor the said Kinchen A. Martin, nor any other person for or on their account, did or would at that or any other time either before or since pay the same or any part thereof to the said plaintiff, but wholly neglected and refused so to do. Whereupon, the said promissory note was then and there duly protested for non-payment, of which

presentment for payment, refusal to pay, and protest for non-payment, the said defendant, John A. Gibson and Kinchen A. Martin, then and there had due notice. By means whereof, the said defendant John A. Gibson the drawer, and the said defendant Kinchen A. Martin, the endorser, became then and there liable to pay to the said plaintiff the said sum of money in said note specified when thereunto afterwards requested, and being so liable, they, the said defendants, John A. Gibson, the drawer, and the said Kinchen A. Martin, the endorser, in consideration thereof, afterwards, to wit: on the day and year last aforesaid, and at the district aforesaid, undertook and then and there promised in manner and form aforesaid, to pay to said plaintiff the said sum of money in said promissory note specified, when they the said defendants should be thereunto requested. And for that, whereas also, afterwards, to wit: on the 18th day of March, in the year 1839, at the district aforesaid, the said defendants and each of them being indebted to the said plaintiff in the sum of five thousand dollars for so much money before that time lent and advanced by the said plaintiff to the said defendants, and each of them, at their and each of their requests, in consideration thereof, then and there promised and undertook faithfully to pay the said sum of money to the said plaintiff on demand. And for that whereas, also, afterwards, to wit: on the day and year last aforesaid, at the district aforesaid, the said defendants and each of them being indebted to the said plaintiff, in the further sum of five thousand dollars, for so much money before that time had and received by the said defendants, and each of them, to the use of the said plaintiff, in consideration thereof, then and there promised and undertook faithfully to pay the said sum of money to the said plaintiff on demand. And for that whereas, also, afterwards, to wit: on the day and year last aforesaid, at the district aforesaid, the said defendants and each of them being indebted to the said plaintiff in the further sum of five thousand dollars for so much money by the said plaintiff paid, laid out and expended to and for the use of the said defendants and each of them, at the special instance and request of all and each of said defendants, in consideration thereof, then and there promised the said plaintiff to pay him the said sum of money on demand.

Yet the said defendants, although often requested so to do, have not, nor has either of them, as yet, paid to the said plaintiff the said sums of money or either of them, or any part thereof: but to pay the same, or either of them, or any part thereof to the said plaintiff, the said defendants and each of them have hitherto wholly failed and refused and still do refuse so to do, to the damage of the said plaintiff of seven thousand dollars, and therefore he brings his suit, &c.

GEO. S. & J. S. YERGER,
Attorneys for plaintiffs.

The said defendants who are served with process in this suit, by attorney come and say that the matters and things contained in plaintiff's declaration are not sufficient in law to have and maintain his action thereof against them, and demur thereto on the following grounds:

1st. This court has no jurisdiction, the plaintiff in his declaration being the assignee of K. A. Martin, who is a citizen of the same State with the maker of the note sued on, as declaration avers.

2nd. Declaration does not aver defendants to bee residents of the Southern District of Mississippi.

And lastly, said declaration is in other respects wholly defective, wherefore they pray judgment, &c.

DAVENPORT,
For defendants.

Joinder.

GEO. S. & J. S. YERGER,
Attorneys, p. q.

And afterwards, to wit: at the said May term of the Court aforesaid, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and forty, came the parties by their attorneys aforesaid, and the demurrer of the defendants to the declaration of the plaintiff being argued, and mature deliberation being thereupon had by the court, it is ordered that the same be overruled, and thereupon leave is given the said defendants to plead to the merits of this action, which they decline, whereby the action of the said plaintiff above thereof against them remains altogether undefended.

Therefore it is considered by the Court that the said plaintiff recover against the said defendants the sum of three thousand nine hundred and fifty-seven dollars and eight cents, for his damages which he has sustained by reason of the premises, and his costs by him about his suit in this behalf expended.

And the said defendants in mercy, &c.

Whereupon the defendants by their attorneys prayed a writ of Error to the Supreme Court of the United States, which is granted them on their executing bond with Absalom Johnson and Mordecai Baldwin, securities conditioned according to law, which said securities are approved by the court.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sct.

I, William Burns, Clerk of the Circuit Court of the United States in and for the ninth Circuit and Southern District of Mississippi, do hereby certify that the foregoing five pages and what is contained on this page, contain a true, full and complete transcript of the re-

cord and proceedings in a certain action of trespass on the case, lately determined in said court between the parties therein named, as fully and completely as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand, and
[L.S.] affixed the seal of said Court, this eleventh day of January, A. D. 1841.

WM. BURNS, Clk.
Circ't Ct. U. S. So. Dist. of Mississippi.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judges of the Circuit Court of the United States for the Southern District of Mississippi, greeting:

Because in the Record and Proceedings, as also in the rendition of the Judgment of a plea which is in the said Circuit Court, before you, or some of you, between Beverly Chew, Plaintiff, and John A. Gibson and Kinchen A. Martin, defendants, a manifest error hath happened, to the great damage of the said John A. Gibson and Kinchen A. Martin, as by their complaint appears:

We being willing that Error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that Error, what of right, and according to the law and custom of the United States, should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of Janu-
[L. S.] ary, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States, the 64th year.

WM. BURNS, Clk.
Circ't Ct. U. States So. Dist. of Mississippi.

Issued 26th May, 1840.

UNITED STATES OF AMERICA, *ss.*

To Beverly Chew, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the